

**Submission to the Special Rapporteur on Cultural Rights
Sexual Rights Initiative
November 2018**

1. “Definitions belong to the definers, not the defined.”¹ This statement by Toni Morrison, in her book *Beloved* goes at the root of the need to assert cultural rights. The framework of cultural rights can be a subversive tool to provide “the defined” the right to make their own definitions. This is particularly relevant to all individuals, communities and groups who have been subject to multiple and intersecting forms of discrimination historically and currently live in a system under multiple oppressions.
2. As defined by the mandate of the Special Rapporteur on Cultural Rights, cultural rights are intrinsically related to identities and the right to assert the identities all of us have, including those ascribed culturally and the ones forced upon people by social structures. This is particularly true of those who are marginalized. As has been correctly pointed out by the mandate of cultural rights, “Every community also has multiple other subcultures, comprising groups which either do not accept or do not live according to, or in complete adherence with, the norms prescribed by the dominant culture. These include, depending on the contexts, ethnic or religious minorities, indigenous peoples, migrants, youth, marginalized populations such as the homeless, women, and groups who consciously reject the main dominant culture, for example human rights activists.”²
3. However, it is very pertinent to remember especially while addressing cultural rights in the legal and semi legal framework, that the structures built to support such rights and ensure that they are respected, protected and fulfilled do not consider the reality of multiple identities. These very multiples identities can sometimes contradict each other and make up an individual and communities. The challenge of upholding cultural rights therefore is how to recognize these multiple identities when people are forced to fit into a homogenous and predominant category because legal systems are built on general assumptions of categories. This challenge is illustrated by some of the strongest assertions of cultural life that seek to break homogeneous and dominating categories in literature and arts. It is a signifier of how women and other marginalized groups are redefining their culture and creating counter narratives.
4. Across the world, most institutions are often complicit in creating or furthering this forced homogeneity - essentializing people’s experiences as one - denying diversity and in turn denying the multiple oppressions faced by people. “The modifier

¹ Morrison, Toni. *Beloved*. Random House, 2007.

² UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights*. A/67/287, 10 August 2012, para. 35, available at <http://undocs.org/A/67/287>

‘multiple’ refers not only to several, simultaneous oppressions but the multiplicative relationships among them as well.”³ This idea of multiple oppression is intrinsic to understand the way women’s lives are fragmented in institutional documents, programmes and legal theories, including feminist legal theory. “The source of gender and racial essentialism (and all other essentialisms, for the list of categories could be infinitely multiplied) is the second voice, the voice that claims to speak for all. The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to additional problems: ‘racism + sexism = straight black women’s experience,’ or ‘racism + sexism + homophobia = black lesbian experience’. Thus, in an essential world, black women’s experience will always be forcibly fragmented before being subjected to analysis, as those who are ‘only interested in race’ and those who are ‘only interested in gender’ take their slices of our lives.”⁴ This has been the history of understanding, not understanding and over simplification of multiple oppression and essentializing people’s experience to create a single identity marker. States use this to create ‘the patriot or the nationalist’ - denying human rights to anyone who is not perceived as the patriot or the nationalist. “Culture” is most often the ‘go-to excuse’ for violation of these rights, irrespective of how people define themselves.

5. The framework of cultural rights is significant to ensure that people are seen not only as individuals but also as a part of communities. “Cultural identity is important for the well-being and dignity of individuals and communities. Individual identities promote characteristics that distinguish one person from another, while collective identities privilege similarities among the individual members of a group.”⁵

Challenges in furthering cultural rights

6. In recent years, respect for cultural diversity has been threatened by those who deny this human reality and seek to impose monolithic identities and ways of being, by those who advocate various forms of supremacy and discrimination, and by diverse populists, fundamentalists and extremists.⁶ Cultural diversity is still wrongly understood as being in opposition to universality, including by some Governments and other actors who misuse it as an excuse for violations of the very universal human rights within which its enjoyment is explicitly embedded, and by others who oppose the concept altogether. Some common examples include criminalizing adolescent sexuality, non-recognition of gender-based violence, denying rights of migrants, and forced adherence to dress codes for women. Despite numerous UN Human Rights Council resolutions recognizing that “no one may invoke cultural

³ Deborah K King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, *Signs*, Vol 14, No. 1 (Autmn, 1989) pp 42 - 72 available at

⁴ Angela P Harris, *Race and Essentialism in Feminist legal theory*, *Stanford Law Review*, Vol 42, No 3 (Feb 1990), pp 581 - 616

⁵ UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights*. A/67/287, 10 August 2012, para. 8, available at <http://undocs.org/A/67/287>

⁶ See A/HRC/34/56 and A/72/155

diversity to infringe upon human rights guaranteed by international law, nor to limit their scope,"⁷ the Human Rights Council remains a forum where cultural diversity is indeed invoked to justify amendments seeking to weaken language on sexual and reproductive health and rights, and to contest concepts such as intimate partner violence, marital rape, comprehensive sexuality education, or even gender.⁸ However, states in intergovernmental negotiations, are not furthering culture but rather using their particular formulation of culture as an opportunistic tool to justify violations of women and girls' human rights.⁹ Invocation of culture, especially in global fora, is persistently used as an opposition to furthering women's human rights.

7. As the Special Rapporteur highlights, "culture permeates all human activities and institutions, including legal systems, in all societies across the world. Culture is created, contested and recreated within the social praxis of diverse groups interacting in economic, social and political arenas. It is manifested in individual and collective self-expression, understanding and practices. Delinking culture from the historical processes and contexts in which it is embedded essentializes cultures, which are then presumed to be static and immutable, homogenous and monolithic, apolitical and detached from prevailing power relations."¹⁰ In the systems of States it is this monolithic, static understanding of culture that is used to oppose certain human rights terms and concepts in resolutions. In the context of sexual rights, it is especially used to wrongly assert that upholding these rights constitutes an imposition of some cultures upon the others. This can manifest in various forms of misogynist, sexist and xenophobic violence including around non-normative sexualities and gender, young people's sexuality, racist and xenophobic violence.

⁷ See Human Rights Council resolutions [A/HRC/RES/37/12](#), [A/HRC/RES/34/2](#), [A/HRC/RES/31/12](#), [A/HRC/RES/28/9](#), [A/HRC/RES/23/10](#), etc.

⁸ See for instance

https://extranet.ohchr.org/sites/hrc/HRCSessions/HRCDocuments/22/SP/14154_37_bef5e33c_b2b2_4e7d_82da_a477cb8c5ffb.docx; as well as the justifications for the amendment submitted to Draft Resolution A/HRC/39/L.13/Rev.1 on "Preventable maternal mortality and morbidity and human rights in humanitarian settings": Vote on Draft Resolution A/HRC/39/L.13/Rev.1, 39th Meeting, 39th Regular Session of the Human Rights Council, 27 Sep 2018, available at <http://webtv.un.org/search/ahrc39l.13rev.1-vote-item3-39th-meeting-39th-regular-session-human-rights-council-5841034623001/?term=maternal%20mortality%20and%20morbidity&lan=english&cat=Human%20Rights%20Council&sort=date#player>;

and for the amendments submitted to Draft Resolution A/HRC/33/L.3/Rev.1 on "Preventable maternal mortality and morbidity and human rights": Vote on draft resolution A/HRC/33/L.3/Rev.1, 40th Meeting, 33rd Regular Session of the Human Rights Council, 30 Sep 2016, available at <http://webtv.un.org/meetings-events/human-rights-council/watch/ahrc33l.3rev.1-vote-item3-40th-meeting-33rd-regular-session-of-human-rights-council/5148794429001/?term=&page=14#player>

⁹ See for instance: Visit of H.E. Mr. Péter Szijjártó, Minister for Foreign Affairs and Trade of Hungary. 21st Meeting, 39th Regular Session of the Human Rights Council, 19 Sep 2018, available at: <http://webtv.un.org/search/p%C3%A9ter-szijj%C3%A1rt%C3%B3-hungary-21st-meeting-39th-regular-session-human-rights-council-5836980127001/?term=&lan=english&cat=Human%20Rights%20Council&sort=date&page=8>

¹⁰ UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights*. A/67/287, 10 August 2012, para. 2, available at <http://undocs.org/A/67/287>

This discourse disregards that cultural norms are constantly formulated and re-formulated every day in the lives of people everywhere. The invisibility of these negotiations in people’s lives furthers the ideas that only formal institutions can ‘change’ culture. A perfect example of this was during the negotiations on the Human Rights Council resolution on the protection of the family, whereby “the family” is delinked from the fact that “families’ and ‘kinship’ the world over are diverse, and non-normative in its many facets.¹¹ Yet, at the Human Rights Council, many States are trying to define what families should mean, without regard for the realities of the world. It is hence essential that the negotiation and assertion of cultural rights be grounded in the realities which can then further human rights norms.

8. The mandate of Cultural Rights, has highlighted that “women must enjoy the freedom to create new communities of shared cultural values around any markers of identity they want to privilege, new cultural meanings and practices without fear of punitive actions, including any form of violence.”¹² This means that women and girls have the right to embrace or reject particular cultural practices and identities as well as to revise and (re)negotiate existing traditions, values or practices, including for instance forced genital mutilation, forced marriage, or abortion among others. “Active engagement in the cultural sphere, in particular, the “liberty to contest hegemonic discourses” and “given” cultural norms offers women, as well as other marginalized groups and individuals, crucial possibilities to (re)shape meanings. It also helps to build central traits of democratic citizenship, such as critical thinking, creativity, sharing and sociability.”¹³ However, States currently use the tenet of democratic citizenship to deny the rights of ‘migrants’. While the states are rebuilding hegemonic discourse and using intergovernmental fora as a space to legitimize the xenophobic discourse, they are at the same time blocking the counter narrative in these spaces by curbing civil society space. Hence the discussion around cultural rights is being defined by States and not by people who have defined their own cultural rights. States are attempting to define every individual in their

¹¹ The first Human Rights Council resolution on “Protection of the family” was adopted in 2014, and other resolutions on the same topic were subsequently adopted yearly until 2017. See Human Rights Council Resolution 26/11: Protection of the family, A/HRC/RES/26/11, 16 July 2014, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/11; Human Rights Council Resolution 29/22: Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development, A/HRC/RES/29/22, 22 July 2015, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/29/22; Human Rights Council Resolution 32/23: Protection of the family: role of the family in supporting the protection and promotion of human rights of persons with disabilities, A/HRC/RES/32/23, 18 July 2016, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/23; and Resolution 35/13: Protection of the family: role of the family in supporting the protection and promotion of human rights of older persons, A/HRC/RES/35/13, 6 July 2017, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/35/13.

¹² UN General Assembly, *Report of the Special Rapporteur in the field of cultural rights*. A/67/287, 10 August 2012, para. 28, available at <http://undocs.org/A/67/287>.

¹³ *Ibid.*, para. 28.

territories and ascribing often stereotypical roles and values to them without the participation of these very same people.

9. In Global Negotiations, “European values” are often portrayed to be at the origin of human rights, democracy, peace and freedom, and used to elicit support for the welcoming of migrants. This portrayal flies in the face of the European history of colonialism, imperialism and slavery, and usually implies that European cultures are somehow superior to others. It also positions States’ international legal obligations relating to human rights, including the right to seek asylum and the right to non-discrimination, as simple “values” that States can *choose* to adhere to. Moreover, this ignores current anti-migrant policies and practices such as those leading to the deaths of thousands of people in the Mediterranean over the past few years, and the incompatibility of this reality with what the European Union describes as its “founding values.” This portrayal of Human Rights as a Global North construction is used by states from the North and South, both using their definition of culture as something that is superior to the other, and usually as a distraction from their international legal obligations.

10. The IE on Cultural Rights, in the early formulation of the mandate, stated that “these important elements should be kept in mind, together with the Declaration on the Right to Development, in which it is recognized that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”¹⁴ Yet, we see that development is counter posed to human rights and consequently, neither is addressed comprehensively. Cultural rights can provide a framework to look at both these sets of rights in a holistic manner instead of looking at rights as piecemeal projects.

Recommendations

- Counter the discourse that position human right opposed to culture by developing resources that are grounded in people’s lives and their negotiations.
- The Special Rapporteur should explore the ways women and girls have (re)negotiated their cultural rights in their lives and the impact of this reimagining within the larger social structures would be great to highlight that cultural rights are not static.
- Literature and arts have always been the sites of changing dominant hegemonic narratives and a tool for political activism. A report with the focus on the ways these are avenues for the assertion of cultural diversity around rights related to sexuality and gender.

¹⁴ A/HRC/14/36, para. 50.

